# SERBIA

## SUBMISSION TO THE COMMITTEE ON ENFORCED DISAPPEARANCES

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# INTRODUCTION

Amnesty International is submitting this briefing to the United Nations (UN) Committee on Enforced Disappearances (hereinafter the Committee) in view of its forthcoming examination, in February 2015, of Serbia's report on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (the Convention).[1]

This document provides information on and explains the reasons for Amnesty International's concerns regarding Serbia's fulfilment of its obligations under the Convention. While Amnesty International was encouraged by Serbia's ratification of the Convention and recognition of the competence of the Committee to receive and consider communications from or on behalf of victims or other states parties in 2011,[2] the organization does not consider that the Serbian authorities have taken any subsequent measures to implement the provisions of the Convention into domestic law.

In particular, the organization wishes to draw the Committee's attention to concerns regarding the definition and criminalization of enforced disappearance, failures in relation to the obligation to investigate acts of enforced disappearances, judicial procedures, including witness protection and the right to truth and reparation, in accordance with Articles 2, 3, 4, 5, 6, 8, 12, and 24 of the Convention.

# DEFINITION AND CRIMINALIZATION OF ENFORCED DISAPPEARANCES

## LACK OF CRIMINALIZATION & CODIFICATION OF ENFORCED DISAPPEARANCE (ARTICLES 2, 4 & 5, QUESTION 2 OF THE LIST OF ISSUES[3])

In its Report to the Committee Serbia states: "The criminal legislation of the Republic of Serbia does not provide an explicit definition of enforced disappearance, in terms of article 2

[1] Committee on Enforced Disappearances: *Consideration of reports submitted by States parties under article 29, paragraph 1, of the Convention, Reports of States parties due in 2013 Serbia**, [30 December 2013], CED/C/SRB/1, 29 January 2014, para.145, http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/SRB/INT_CED_INR_SRB_7067_E.pdf

[2] International Convention for the Protection of All Persons from Enforced Disappearance, (CPED), http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx; ratified by Serbia, 18 May 2011. http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-16&chapter=4&lang=en

[3] Committee on Enforced Disappearances, *List of issues in relation to the report submitted by Serbia under article 29, paragraph 1, of the Convention*, CED/C/SRB/Q/1, 15 October 2014, available at: http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/SRB/CED_C_SRB_Q_1_18345_E.pdf

of the Convention".[4]

Pursuant to Article 4 of the Convention, states parties to it must define conduct that constitutes enforced disappearance under the Convention when committed by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state as a crime in a manner consistent with the definition in Article 2 of the Convention.

The alternative proposed by Serbia to justify its failure to make enforced disappearance criminal under national law is not valid. Serbia stated that: "However, the actions of arrest, detention, abduction, or any other form of unlawful deprivation of liberty, may provide for legal characteristics of criminal offences against freedoms and rights of persons and citizens of the Criminal Code, primarily the criminal offence 'Unlawful deprivation of liberty' referred to in article 132 and the criminal offence 'Abduction' referred to in article 134".[5]

Further the state party has not only failed to indicate if they have any plans establish the offence of enforced disappearances, which complies with the definition in the Convention, but also suggested in an interview with Amnesty International that they would not do so.[6]

Serbia has also failed to define enforced disappearance as a crime against humanity under national law. Similarly, Article 371, Crimes against Humanity, fails to adequately reflect the definition of enforced disappearances, as set out in Article 2 of the Convention, and includes only selected elements of the crime: including "murder …enslavement, torture... [and] detention or abduction of persons without disclosing information on such acts in order to deny such persons legal protection". Further, Article 372 (War Crimes against the Civilian Population) also fails to codify enforced disappearances, including only including crimes which may take place as part of an enforced disappearance, including "hostage taking", "ordering against civilian population [the] inflicting of bodily injury, torture, inhumane treatment", and "order[ing] deportation or relocation".[7]

While in para. 37 of its Report to the Committee Serbia explains that: "[s]ome of the actions described, in terms of article 2 of the Convention, could also result in occurrence of elements of crimes against humanity and other values protected by the international law", Amnesty International recalls that the obligation under Article 4 requires that states parties define enforced disappearance as a separate and autonomous crime. As the Committee noted in its Concluding Observations on Spain[8] it is not enough to define offences that are often linked with enforced disappearances such as abduction, unlawful detention, illegal deprivation of liberty, torture or extrajudicial executions.

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[4] CED/C/SRB/1, para.36.

[5] *Report submitted to Committee on Enforced Disappearances: Serbia*, para.36. At paragraph 41 Serbia repeats: "Criminal legislation of the Republic of Serbia does not have a specified act of enforced disappearance in the manner defined by the Convention in article 2."

[6] Amnesty International interview with Vladimir Pandurić, Ministry of Justice, November 2013.

[7] Criminal Code, (Official Gazette of RS, Nos. 85/2005, 88/2005, 107/2005) (in translation, see: http://www.osce.org/serbia/18244?download=true)

[8] *Concluding observations on the report submitted by Spain under article 29*, paragraph 1, of the Convention, CED/C/ESP/CO/1, 12 Dec. 2013, para 10.

Amnesty International has previously called on the Serbian authorities to promptly comply with its obligations under international law by making enforced disappearance criminal under Serbian law.[9]

## THE LEGALITY PRINCIPLE

As the Serbian authorities have recently explained in their report to the Committee, crimes against humanity committed in the territory of the former Yugoslavia during the 1990s armed conflicts have not been investigated or prosecuted in Serbia because crimes against humanity were not defined in Serbian law until 2005.[10]

This position presents an incorrect interpretation, and a misapplication of the legality principle (*nullum crime sine lege*), which, in turn, leads to the impunity of those responsible for such crimes. Serbia is obliged to investigate and, if there is sufficient admissible evidence, prosecute those suspected of criminal responsibility for crimes under international law – including crimes against humanity - irrespective of the date of their commission, as set out in several treaties to which Serbia is a party. As it has been explained by a leading scholar, "At the time the crime was committed, a written or unwritten norm must have existed upon which to base criminality under international law. The principle of legality (*nullum crimen sine lege*) is part of customary international law."[11]

Several international treaties set the standard that no one should be "held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed".[12] It is however undisputable under international law that the prohibition of crimes against humanity is considered a norm of *jus cogens*,[13] and that the principle of non-retroactivity is not

[9] Amnesty International, *No impunity for enforced disappearances: Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance*, (Index: IOR 51/006/2011), www.amnesty.org/en/library/info/IOR51/006/2011/en

[10] "As the law [the 1976 Criminal Law of the SFRY] does not contain specific provisions referring to the criminal offence "Crime against humanity", so far the Court [Higher Court in Belgrade] has never had cases in which a criminal offence was qualified as a crime against humanity*"., Report submitted to Committee on Enforced Disappearances: Se*rbia, para.14, footnote 56.

[11] G. Werle, *Principles of International Criminal Law*, Second Edition, TMC Asser Press, p.192.

[12] ICCPR, New York, 16 December 1966, article 15. The Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950. Article 7 contains a similar provision. Entry into force: 3 September 1953. Serbia signed the Convention on 3 April 2003 and deposited the instrument of ratification on 3 March 2004. Recognized scholar Manfred Nowak, is of the view that "As with Art. 7(2) of the ECHR, Art.15 (2) of the Covenant contains an exception to the prohibition of retroactive national criminal laws if an act or omission was, at the time when it was committed, criminal under *customary international law*", Manfred Nowak, *UN Covenant on Civil and Political Rights*, p.367.

[13] M. Cherif Bassiouni, "International Criminal Justice in Historical Perspective: The Tension between States' Interests and the Pursuit of International Justice", in the *Oxford Companion to International Criminal Justice*, A. Cassese (ed.) (Oxford 2009) p. 131: ("[j]us cogens crimes include: genocide, crimes against humanity, war crimes, slavery, and slavery-related practices (including human trafficking for sexual exploitation), torture, piracy, and according to some, certain manifestations of terrorism"). See also: ICJ, *Questions relating to the Obligation to Prosecute or Extradite* (Belgium v. Senegal), Judgment, 20 July 2012, ICJ Reports 2012, para.99 and Inter American Court of Human Rights, case of *Rochac Hernández et al. vs El Salvador*, Judgment of 14 Oct. 2014 (Merits), para.92.

applicable to "the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations."[14]

Amnesty International considers that the 'Law on the Organization and Competence of Government Authorities in War Crimes Proceedings', as amended in 2004,[15] and which mainly regulates the establishment, organization, competences and powers of the Office of the War Crimes Prosecutor (OWCP) for the purposes of detection, prosecution and trying of

[14] The European Court of Human Rights has explained the scope and application of the legality principle under international law in a number of cases. For example, the Court stated in a recent case against Bosnia and Herzegovina that: "Serious violations of international humanitarian law falling under the State Court's jurisdiction can be divided into two categories. Some crimes, notably crimes against humanity, were introduced into national law in 2003. The State Court and the Entity courts therefore have no other option but to apply the 2003 Criminal Code in such cases (see the international materials cited in paragraphs 31 and 32 above). In this regard, the Court reiterates that in Šimšić v. Bosnia and Herzegovina (dec.), no. 51552/10, 10 April 2012, the applicant complained about his 2007 conviction for crimes against humanity with regard to acts which had taken place in 1992. The Court examined that case, inter alia, under Article 7 of the Convention and declared it manifestly ill-founded. It considered the fact that crimes against humanity had not been criminal offences under national law during the 1992-95 war to be irrelevant, since they had clearly constituted criminal offences under international law at that time." European Court of Human Rights, Grand Chamber, case of *Maktouf and Damjanović v. Bosnia and Herzegovina*, Judgment, 18 July 2013, para.55.

And also in a case against Estonia that: "The Court reiterates that Article 7 § 2 of the Convention expressly provides that this Article shall not prejudice the trial and punishment of a person for any act or omission which, at the time it was committed, was criminal according to the general principles of law recognised by civilised nations. This is true of crimes against humanity, in respect of which the rule that they cannot be time-barred was laid down by the Charter of the Nuremberg International Tribunal." European Court of Human Rights, case of August Kolk and Petr Kislyiy against Estonia, Judgment, 17 January 2006.

Likewise, the Special Tribunal for Lebanon – established by the UN Security Council, acting under Chapter VII of the Charter of the United Nations, in 2006 - also explained the true meaning of the legality principle under international law:

"[A]rticle 15 of the ICCPR allows at the very least that fresh national legislation (or, where admissible, a binding case) defining a crime that was already contemplated in international law may be applied to offences committed *before* its enactment without breaching the *nullum crimen* principle. This implies that individuals are expected and required to know that a certain conduct is criminalized in international law: at least from the time that the same conduct is criminalized also in a national legal order, a person may thus be punished by domestic courts even for conduct predating the adoption of national legislation". Special Tribunal for Lebanon, Appeals Chamber, *Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging*, STL-11-01/1, 16 February 2011, para.133.

[15] The Law on Organization and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes, (Official Gazette of the Republic of Serbia, no. 67/2003), 1 July 2003 was amended in 2004; see Article 2 of the Law Amending the Law on Organization and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes, (Official Gazette RS, no. 135/2004, 21 December 2004, Article 3 (amending Article 2 of the original law), The name of the law was also changed to "Law on the Organisation and Competence of Government Authorities in War Crime Proceedings", http://www.osce.org/serbia/18571?download=true

criminal offences which were committed in the territory of the former SFRY, should be applied not only to the investigation and prosecution of those suspected of criminal responsibility for war crimes, but also for crimes against humanity (as is provided in Article 2)[16].

## STATUTES OF LIMITATIONS (ARTICLE 8, QUESTION 6 OF THE LIST OF ISSUES)

Amnesty International recalls that, as a state party to the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, Serbia may not apply statute of limitations to crimes against humanity "irrespective of the date of their commission".[17]

Likewise, as the Committee against Torture has underlined, Serbia should ensure that acts of torture – which also include enforced disappearances – should not be subject to a statute of limitations.[18] The same protection should also apply to the ordinary crimes noted above, which may in themselves constitute elements of an enforced disappearance.

## RECOMMENDATIONS

Amnesty International recommends that the Serbian authorities:

- Promptly take the necessary steps to ensure that enforced disappearance is codified as a separate crime in criminal law, in accordance with the definition given in Article 2 of the Convention;

- Amend Article 371 of the Criminal Code to ensure that crimes against humanity, including enforced disappearance, are defined in accordance with Article 7 of the Rome Statute of the International Criminal Court;

- Ensure that enforced disappearances, whenever they have taken place, are not subject to a statute of limitation.

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[16] Article 2: This Law shall apply in detecting, prosecuting and trying: (1) Crimes against humanity and international law set forth in Chapter XVI of the Basic Criminal Code; (2) serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991, stipulated in the Statute of the International Criminal Tribunal for the former Yugoslavia.

[17] Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, G.A. res. 2391 (XXIII), annex, 23 U.N. GAOR Supp. (No. 18) at 40, U.N. Doc. A/7218 (1968), entered into force Nov. 11, 1970. Serbia is a state party since 12 March 2001. The SFRY had signed and ratified the Convention on 16 December 1968 and 9 June 1970, respectively.

[18] The Committee regrets the Supreme Court ruling of 2005 where it applied a statute of limitation in respect of the crime of torture", Concluding observations of the Committee against Torture: Serbia, CAT/C/SRB/CO/1, 19 January 2009, para.5, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/SRB/CO/1%20&Lang=En

# THE OBLIGATION TO INVESTIGATE ACTS OF ENFORCED DISAPPEARANCE

## THE OBLIGATION TO INVESTIGATE (ARTICLE 3 & 5, QUESTION 3 OF THE LIST OF ISSUES)

The International Convention for the Protection of All Persons from Enforced Disappearance codified a crime that already existed in international law and did not give rise to or create a new form of criminal conduct. In fact, in international law, the offence or crime of enforced disappearance dates back to long before the Convention entered into force in 2010.

Serbia, in common with all states, has an international law obligation, based on customary law, to investigate all cases of enforced disappearance, whenever they were committed, and, should admissible and sufficient evidence be found, it is obliged to prosecute those allegedly responsible. Even if this is not possible, for whatever reason, victims still have the right – as set out in Article 24 – to know the truth regarding the circumstances of the enforced disappearance, the progress in and results of the investigation and the fate and whereabouts of the disappeared person. Further, Serbia is also obliged under Article 24, to provide the victims of enforced disappearances with reparation, including compensation.

In its Concluding Observations on Serbia's implementation of the ICCPR in 2004, the UN Human Rights Committee (the Human Rights Committee) observed: "While noting the effective work regarding exhumations and autopsies of some 700 bodies from mass graves in Batajnica, the Committee is concerned at the lack of progress in investigations and prosecutions of the perpetrators of those crimes" … "The State party should, along with the exhumation process, immediately commence investigations into apparent criminal acts entailing violations of the Covenant. The particular needs of the relatives of the missing and disappeared persons must equally be addressed by the State party, including the provision of adequate reparation".[19]

In 2011 the Human Rights Committee again addressed the same concern: "With reference to its previous concluding observations (para. 10), the Committee remains concerned that no significant progress has been made to investigate, prosecute, and punish those responsible for the killing of more than eight hundred persons whose bodies were found in mass graves in and near Batajnica, and to compensate the relatives of the Victims"… "The State party should urgently take action to establish the exact circumstances that led to the burial of hundreds of people in Batajnica region, and to ensure that all individuals responsible are prosecuted and adequately sanctioned under the criminal law. The State party should also ensure that relatives of the victims are provided with adequate compensation".[20]

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[19] *Concluding Observations of the Human Rights Committee: Serbia and Montenegro*, para 10, 12/08/2004, CCPR/CO/81/SEMO, http://www.unhchr.ch/tbs/doc.nsf/0/c4f9dd7baa1e61aec1256ee1004c4a96?Opendocument

[20] *Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations*

Although Serbia at paragraph 39 in their report to the Committee state that the Office of the War Crimes Prosecutor (OWCP) is responsible for the prosecution of Crimes against Humanity, no investigations or prosecutions for crimes against humanity, including enforced disappearance, have yet been conducted by the Serbian prosecutorial authorities. The reluctance of the OWCP to indict under charges of crimes against humanity – as currently defined in Article 371– may have practical consequences in terms of impunity. In relation to the Kosovo conflict, for example, prosecutions for enforced disappearances have instead been brought under Article 144 (war crimes against prisoners of war). Further, prosecutions for abductions by non-state actors have been brought under Article 142 (war crimes against the civilian population) or even though the alleged offences took place after the conclusion of the internationalized armed conflict in June 1999, under the Military Technical (Kumanovo) Agreement concluded between NATO and the FRY on 9 June and UN Resolution 1244/99, adopted on 10 June.[21] In several cases brought before the Appeal Court, concerns have been raised about the applicability of the charges, and even though the Appeal Court's final rulings on this issue have been mixed, there is a danger that the failure to correctly qualify the crimes may potentially lead to impunity.

For example, the Appeal Court's ruling in January 2013 in the case of the three Albanian – American Bytyqi Brothers, who – following the end of the armed conflict in Kosovo, (which they had joined as volunteers), –had accidentally crossed the border into Serbia. They were subsequently arrested for a minor offence, detained and on their release, handed over to unknown Interior Ministry officials, who allegedly killed them in July 1999. Their bodies were later exhumed from the top of a mass grave on Ministry of Interior land at Petrovo selo.

The Appeal Court found that the accused could not be convicted under Article 144 (War Crimes against Prisoners of War), as it could not be established that the three Albanian-American brothers, and former KLA combatants, were prisoners of war. In particular, the court noted that they had entered Serbia proper after the cessation of the armed conflict on 9 June 1999.[22] This was the second and final acquittal of the defendants, Sreten Popović and Miloš Stojanović, former members of the Ministry of Interior Police, who were suspected of handing the Bytyqi brothers over to unknown members of the same police force.

Similar questions have been raised in appeals related to the prosecution of Kosovo Albanians for abductions which took place after the end of the armed conflict in June 1999, which Amnesty International considers to have been part of a widespread, as well as a systematic attack on a civilian population, which constitute crimes against humanity, and must be

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*of the Human Rights Committee* - Serbia, para 12, 20 May 2011, CCPR/C/SRB/CO/2, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSRB%2fCO%2f2&Lang=en;

[21] Kumanovo Agreement, http://www.nato.int/kosovo/docu/a990609a.htm; UNSCR 1244/99, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N99/172/89/PDF/N9917289.pdf?OpenElement

[22] Kž1 Po2 5/12, 18 January 2013, http://www.bg.ap.sud.rs/lt/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/kz1-po2-5-12.html. The appeal followed a retrial in May 2012, under an amended indictment under Article 144, issued in April 2012 which begins, "In the first half of July 1999, in the context of and in close connection with the armed conflict..", KTRZ 5/06 Braća Bitići, Precizirana Optužnica (Popović i Stojanović) [not available in English], 5 April 2012, http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2012_04_05_LAT.pdf

investigated as such.[23]

Of course, in raising the temporal issue, Amnesty International does not mean to imply that prosecutions for crimes against humanity may only be brought after the end of an armed conflict; prosecutions for crimes against humanity may be brought at any time where violations of international humanitarian law take place as part of a widespread or systematic attack against the civilian population, as set out in Article 371.

## RESPONSIBILITY OF COMMANDERS AND OTHER SUPERIORS (ARTICLE 6, QUESTIONS 4 & 5 OF THE LIST OF ISSUES)

The failure to investigate and prosecute commanders and civilian superiors is a concern in the fight against impunity in Serbia. In 2009, for example, the Committee against Torture concluded that Serbia should ensure that: "All persons, including senior police officials, military personnel, and political officials, suspected of complicity in and perpetrators of war crimes and crimes against humanity, are brought to justice in adequate penal proceedings, including after the scheduled closure of the ICTY tribunal".[24]

This is true both for those accused of giving criminal orders and, even more evidently, in connection with command responsibility. The responsibility of commanders and other superiors is set out in Article 384,"Failure to Prevent Crimes against Humanity and other Values Protected under International Law", of the 2005 Criminal Code; yet, as of the time of writing, this article has not been applied in indictments or prosecutions at the Special War Crimes Chamber in Belgrade.

The lack of application of command responsibility necessarily leads to the impunity of many of those leaders who bear the greatest responsibility for crimes committed during the 1990s armed conflicts.

The Protocol Additional to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977), [25] to which Serbia is a state party (and to which the then SFRY and FRY were a state party at the time of the armed conflicts), defines the responsibility of commanders and other superiors regarding war crimes in the following terms:

"The fact that a breach of the Conventions or of this Protocol was committed by a

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[23] See for example, KTRZ 16/08 Gnjilane Group (Ajdari And Others), 11 August 2009, see p. 4, http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2009_08_11_ENG.pdf, and HLC, *Case: Gnjilane Group, the indicted Fazli Ajdari and others Belgrade Court of Appeals – War Crimes Department No. of case: Kž 1 Po2 No. 2/13 (appeal)*, http://www.hlc-rdc.org/wp-content/uploads/2013/10/Gnjilane-Group-14.05.2013.pdf*) ;* See also, Appeal of Marc Kashnjeti, Kž1 Po2 1/13, 8 March 2013, http://www.bg.ap.sud.rs/cr/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/krivicno-odeljenje/ratni-zlocini/kz1-po2-1-13.html . Both cases concern the alleged abduction of Kosovo Serbs by the Kosovo Liberation Army; for further information, see *Serbia: Ending Impunity for crimes under International law*, pp. 24-25. See also, *UNMIK's Legacy: The failure to deliver justice and reparations to the relatives of the abducted*, (Index: EUR 70/009/2013), 27 August 2013, http://www.amnesty.org/en/library/info/EUR70/009/2013/en

[24] *Concluding observations of the Committee against Torture: Serbia*, 19 January 2009, CAT/C/SRB/CO/1, para.11 (b).

[25] Serbia is a state party to the Protocol I since 16 October 2001.

subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach."

The effective exercise of command is an essential tool in ensuring that crimes under international law are prevented and, if they nonetheless occur, are punished.[26]

Although a number of middle-ranking officers, albeit a small number, have been indicted for war crimes by the OWCP, so far not one senior military or police official or politician has been indicted for their command responsibility – aside those cases at the ICTY.

However, in August 2014, an investigation for command responsibility was initiated against Major General Dragan Živanović, former commander of the 125th Motorized Brigade, in relation to war crimes in Ćuška, Pavljan, Ljubenić and Zahač in Kosovo, between 1 April and 15 May 1999. He is suspected of failing to prevent "a campaign of terror against Albanian civilians", including murder, the destruction of houses, plunder and forced expulsion. As described below, lower- ranking officers have, in relation to Ljubenić, been investigated on suspicion of transferring the bodies of Kosovo Albanians to Serbia (see below); it remains to be established whether the investigation will result in an indictment including - in the absence of an adequate definition - the elements of enforced disappearances.

It is claimed by some observers that an indictment based on the responsibility of commanders would violate the Constitution of the Republic Serbia,[27] because command responsibility was not 'defined' under the law in force in the former Yugoslavia at the time of the armed conflicts.[28] According to the Chief Prosecutor interviewed by Amnesty International in 2013, the OWCP "does not make a decision on issues of command [responsibility]". This interpretation of the legality principle, as explained above, is mistaken. SFRY was a state party to Protocol I well before the 1990s armed conflicts – indeed since 1978 - and, therefore, Serbia, which claims to continue the international legal personality of the former Yugoslavia, is obliged to abide by it without invoking the provisions of its internal law as justification for its failure to do this.[29]

Moreover, as the Humanitarian Law Centre (HLC) have noted, "Guidelines on the Application of International Humanitarian Law in the Armed Forces of the Socialist Federal Republic of Yugoslavia, adopted in 1988 and applied during the 1990s, clearly define the command responsibility of military commanders". Article 21 of the guidelines states:

"A military commander shall be held individually responsible for violations of International

[26] Amnesty International, *Amicus curiae* observations on superior responsibility submitted pursuant to Rule 103 of the Rules of Procedure and Evidence, in the case of *The Prosecutor v. Jean Pierre Bemba Gombo*, International Criminal Court, No.ICC-01/05-01/08, 20 April 2009.

[27] Constitution of the Republic of Serbia, Article 34, para.1 ("No person may be held guilty for any act which did not constitute a criminal offence under law or any other regulation based on the law at the time when it was committed, nor shall a penalty be imposed which was not prescribed for this act").

[28] HLC, 'Dossier 549th Motorized Brigade of Yugoslav Army', 2013, pp.3-4, http://www.hlc-rdc.org/wp-content/uploads/2013/03/Dossier-549th-Motorized-Brigade-of-Yugoslav-Army.pdf

[29] Vienna Convention on the Law of Treaties, Article 27.

Humanitarian Law if he knew or he should[30] have known that his subordinate or other units or individuals were about to commit such crimes, and, if at a time when it is still possible to prevent the commission of the crime, he does not take necessary measures to prevent these violations. A military commander shall also be held responsible if he knows that violations of international humanitarian law were committed, and he fails to initiate disciplinary or criminal proceedings against the perpetrators, or, if he is not authorized to initiate such proceedings, he fails to report them to the appropriate military commander".[31]

## BATAJNICA AND OTHER MASS GRAVES

Amnesty International has long highlighted Serbia's failure to bring to justice those responsible for ordering (and implementing) the concealment of the bodies of ethnic Albanians killed in Kosovo by Serb forces. This includes the transfer of their mortal remains to Serbia proper for destruction or reburial, including on Ministry of Interior Police land at Batajnica in Belgrade and Petrovo selo, and in Lake Perućac.[32]

In 2001-2 the remains of almost 900 ethnic Albanians disappeared by Serb forces were exhumed at sites in Serbia, including 744 bodies at the Ministry of Interior training ground at Batajnica,70 on Ministry of Interior land at Petrovo Selo and 84 in Lake Perućac.[33] The bodies of others are believed to have been burned in industrial furnaces in Surdulica and Trepča (north Mitrovica). More recently, during 2014, exhumations at a mass grave in Rudnica quarry near Raška in Serbia, located the mortal remains of another 45 bodies, and 88 other body parts of Kosovo Albanians.

The most senior political, military and police officials responsible for ordering the cover-up operation were amongst those convicted of joint criminal enterprise at the International Criminal Tribunal for the former Yugoslavia (ICTY), confirmed by the Tribunals Appeals Chamber in 2014.[34] In proceedings at the ICTY, former Assistant Minister of the Interior and Chief of the Public Security Department (RJB), responsible for all RJB units in Kosovo was indicted, in relation to the enforced disappearance of ethnic Albanians, for individual and joint responsibility for his participation in "the joint criminal enterprise… [including that] …[t]ogether with [Vlajko] Stojiljković and others, he took a lead role in the planning, instigating, ordering and implementation of the programme of concealment by members of the RJB and subordinated units of the crime of murder, in coordination with persons in the

[30] In original translated as "could".

[31] "Dossier: 549th Motorized Brigade of the Yugoslav Army", p.4, and footnote 11, Article 21, *Direction on the application of the rule of International Humanitarian Law in the Armed Forces of the Socialist Federal Republic of Yugoslavia*, Official military gazette, no. 10, 1988.

[32] See for example, *Serbia and Montenegro, Amnesty International's concerns submitted to the Human Rights Committee, February 2004*, pp. 3-5; on 24 June 2003, Vladan Batić, Serbian Minister of Justice specifically referred to the investigations at Batajnica and Petrovo Selo, indicating that these cases would be amongst the first to be prosecuted under the new Law on War Crimes when it entered into force on 1 July 2003. On 25 October 2003, the Special Prosecutor for War Crimes Vladimir Vukčević reportedly stated in an interview with B92, that the Batajnica case had been processed and that unnamed persons were under investigation, and that indictments would be filed on completion of the investigation.

[33] In 2012, the mortal remains of 160 Bosniaks were also found in the lake, http://www.balkaninsight.com/en/article/more-than-160-perucac-victims-identified

[34] For final decisions see www.icty.org/x/cases/milutinovic/acjug/en/140123.pdf, and http://www.icty.org/x/cases/djordjevic/acjug/en/140127-summary.pdf;

RDB [state security] and in the VJ."[35] In February 2011, the Trial Chamber found, amongst other matters, that Vlastimir Đorđević had played a leading role in efforts by the Ministry of Interior to conceal the murders, both as a member of a joint criminal enterprise, and in aiding and abetting the crimes. He was convicted on three counts of crimes against humanity, and on two counts of violations of the laws and customs of war.[36]

However, lower-ranking military and police commanders, within the chain of command, and reasonably suspected of coordinating and implementing aspects of the operation, have not been brought to justice, despite the ample evidence provided in proceedings at the ICTY. [37]

Amnesty International considers this case should have long ago been established as a priority for investigation and prosecution, as recommended by the Human Rights Committee in 2004 and 2011.[38]

In May 2013, two police officers, one a serving special police unit (gendarmerie) officer, were arrested on suspicion of committing war crimes against at least 65 Albanian civilians, and of the "deportation and transportation of the bodies of those killed in the village of Ljubenić [in Kosovo] to the police [training] centre in Batajnica [in Belgrade]".[39] Reportedly the case was based on evidence provided by participants in the alleged crime.

However, when on 22 November 2013, the Office of the War Crimes Prosecutor announced that an indictment had been raised in the Ljubenić case, he made no reference to the transfer of remains to Batajnica.[40] However, although the indictment does not make specific reference to the transfer of the bodies, it includes amongst the list of evidence to be presented to the court, a list of DNA identified mortal remains from two grave sites at Batajnica, suggesting that some elements of the prosecution will address the crime of enforced disappearance.

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[35] IT-05-87/1-PT, Fourth amended Indictment, Prosecutor against Vlastimir Đorđević, para. 61(d).

[36] Case No. IT-05-87/1-T, Public Judgement, http://www.icty.org/x/cases/djordjevic/tjug/en/110223_djordjevic_judgt_en.pdf; the specific elements described above were confirmed on appeal.

[37] See, for example, Section VII, Concealment of Bodies, pp. 501-552, http://www.icty.org/x/cases/djordjevic/tjug/en/110223_djordjevic_judgt_en.pdf

[38] *Concluding Observations of the Human Rights Committee: Serbia and Montenegro*, para 10, 12/08/2004, CCPR/CO/81/SEMO, http://www.unhchr.ch/tbs/doc.nsf/0/c4f9dd7baa1e61aec1256ee1004c4a96?Opendocument *Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations of the Human Rights Committee* - Serbia, 20 May 2011, CCPR/C/SRB/CO/2, para 12, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSRB%2fCO%2f2&Lang=en

[39] http://www.balkaninsight.com/en/article/serbia-arrested-gendarmerie-member-for-ljubenic-massacre/1452/47; OWCP, *Ljubenić War Crime Suspects Under Arrest*, http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2013/VS_2013_05_21_ENG.pdf

[40] OWCP Announcement, *Indictment raised for a 1999 Ljubenić War Crime*, 22 November 2013, http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2013/VS_2013_11_22_ENG.pdf; "spisak identifikovanih posmrtnih ostataka putem DNK ekshumiranih tela nalokaciji „Batajnica 3 i 4" od 26.05.2004. godine", OWCP, Indictment KTO 8/13, published 7 April 2014, http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2014_04_07_LAT.pdf

Amnesty International hopes that the indictment for Ljubenić is part of a wider indictment related to the enforced disappearance of Kosovo Albanians, as hinted at by the OWCP in their 2013 report.[41] However, in July 2012, the government reported to the UN Human Rights Committee, that although the investigation had been a priority for the OWCP since its inception, a report submitted to the OWCP by the Ministry of Interior War Crimes Investigation Service (WCIS, discussed below) was not able to provide a "reliable conclusion" on the identification of the perpetrators.[42] Amnesty International notes that the bodies of Kosovo Albanians were buried in mass graves on Ministry of Interior property, and evidence of the involvement of Ministry of Interior Police was made public in proceedings at the ICTY.

Some progress has been made by the OWCP in the investigation of enforced disappearances outside Kosovo; on 5 December 2014, following a joint investigation with the authorities in Bosnia and Herzegovina, 15 Bosnian Serbs, suspected of the enforced disappearance on 27 February 1993, of 20 passengers from a train travelling through Bosnian town of Štrpci.[43] The mortal remains of three of the passengers were later exhumed from Lake Perućac; it is suspected the remaining passengers, whose bodies were thrown into the river Drina, are buried somewhere near Višegrad in Bosnia and Herzegovina. (See also Reparation, below).

In part, the failure to investigate enforced disappearances may also be attributed to the WCIS, a dedicated police unit within the Ministry of Interior, established to investigate crimes under the jurisdiction of the SWCC at the request of the OWCP.[44] With a staff of 50, responsible for the investigation of war crimes, the interview and arrest of suspects and the location of missing persons, the WCIS includes up to 25 criminal investigators.[45]

However, the location of the WCIS within the Ministry of Interior presents a particular problem with respect to the investigation of cases of enforced disappearances and other crimes under international law in Kosovo. The unit is hampered by its position within the Ministry of Interior, whereby its officers are often required to investigate allegations against police officers senior to them in rank, responsibility and pay-grade. Indeed the unit was initially headed by officers who were themselves alleged to be implicated in war crimes.

As they lack the authority to conduct cross-border investigations, the WCIS are predominantly

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[41] See OWCP, *Office of the War Crimes Prosecutor, Ten years later*, pp.7-9, http://www.tuzilastvorz.org.rs/html_trz/POCETNA/P_MONOGRAFIJA_10_GODINA_ENG.pdf

[42] Human Rights Committee, *Concluding observations of the Human Rights Committee: Serbia*, Addendum: Information received from Serbia on the implementation of the concluding observations of the Committee* [25 July 2012], CCPR/C/SRB/CO/2/Add.1, 22 January 2013, paras. 2-10, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fSRB%2fCO%2f2%2fAdd.1&Lang=en

[43] OWCP, Press Release, "Fifteen under arrest on suspicion of 1993 seizure and killing of 20 Passengers in Štrpci", 5 December 2014, http://www.tuzilastvorz.org.rs/html_trz/VESTI_SAOPSTENJA_2014/VS_2014_12_05_ENG.pdf

[44] Article 8, Law on Organization and Jurisdiction. "The Service shall act on requests of the Prosecutor for War Crimes, in accordance with law".

[45] The unit has been in the past criticised for its passivity and lack of initiative, Amnesty International interviews, OWCP and head of the Criminal Justice System Unit in the OSCE Mission to Serbia, November 2013. More recently, both the OWCP and WCIS report an improvement in cooperation, Amnesty International interviews November 2014.

involved in investigations related to Kosovo, where former and serving Ministry of Interior police are reasonably suspected of widespread violations of international law during the 1998-9 armed conflict. In investigating their still-serving or former colleagues, according to the then head of the Criminal Justice System Unit in the OSCE Mission to Serbia, the WCIS "[may] try to circumvent them for political or other reasons, or because of personal affiliations within the police".[46] Although the OWCP in 2009 reported co-operation in the Suva Reka investigation and in arrests in relation to Ćuska, in other cases access to information has reportedly been obstructed by the WCIS.

Dejan Marinković, Head of the WCIS, was candid about the obstacles faced in investigating their colleagues, especially serving officers; he told Amnesty International: *"In 'Ćuška', and other cases where there are colleagues involved, according to the CPC we must arrest and process them – all perpetrators. If the prosecutor thinks there is enough evidence then we have to make that arrest. We have to do this whether we like it or not, [*we have to be*] accountable and* [act] *according to the law. It is the same if we are collecting evidence: it is more difficult where colleagues are concerned. Then there are more aggravating circumstances with the colleagues. Evidence is destroyed, they are afraid and frightened and do not want to testify, so it is hard to get qualitative evidence".*[47]

## RECOMMENDATIONS

Amnesty International recommends that the Serbian authorities:

- Comply with its obligation to investigate enforced disappearances, either as a crime against humanity, war crime or random or isolated acts, that have taken place in the past and to punish those responsible.

- Discharge its obligations to investigate and, if there is sufficient admissible evidence, prosecute those suspected of criminal responsibility for crimes under international law also pursuant to the principle of command responsibility.

- Take measures to review, and if necessary, reform the current WCIS, with the aim of ensuring an impartial and professional unit, provided with adequate resources and the capacity to carry out prompt, impartial, thorough and effective investigations.

[46] Amnesty International interview, Ivan Jovanović, as above, November 2013.

[47] Amnesty International interview, Dejan Marinković, November 2013.

# JUDICIAL PROCEDURE AND COOPERATION IN CRIMINAL MATTERS

## SUSPENSION OF SUSPECTS (ARTICLE 12, QUESTION 8 OF THE LIST OF ISSUES)

Applicable law provides for the suspension of police officials from duties during investigations. However this provision has only recently been invoked. In March 2014, following pressure from the Humanitarian Law Centre, Vladan Krstović, a serving gendarmerie officer was suspended from duty until the conclusion of proceedings, pursuant to Article 165 (3) of the Law on Police. This provides that "a Ministry employee may be temporarily suspended from duty upon a reasoned request by his superior if a final investigation order has been rendered against him for an offense subject to ex officio prosecution or if disciplinary proceedings have been initiated against him for serious violation of police duty and if keeping this person in service would harm the interest of the service". Vladan Krstović was indicted with other members of the 177th Military Territorial Detachment for the murder of at least 46 Albanian civilians in the village of Ljubenić on 1 April 1999.[48]

However, despite similar requests by the HLC, serving army officers Pavle Gavrilović and Rajko Kozlina, indicted for war crimes against the civilian population, have not been suspended from their duties, on the basis that requests for their suspension have not been made by the OWCP.[49]

## WITNESS PROTECTION (ARTICLE 12, QUESTION 9 OF THE LIST OF ISSUES)

In 2012 associations of the relatives of the missing from both Serbia and Kosovo, called on the authorities in both Serbia and Kosovo, to: "Strengthen witness protection programs, taking into consideration the potential impact witness testimony may have on determining the location of clandestine gravesites that contain the mortal remains of missing persons".[50]

Concerns about the failure of the Serbian Ministry of Interior Police Witness Protection Unit (WPU) to provide adequate and effective protection for witness in war crimes trials at the SWCC, have also been highlighted by a wide range of domestic and international

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[48] Article 165 (3) of the Law on Police: "a Ministry employee may be temporarily suspended from duty upon a reasoned request by his superior if a final investigation order has been rendered against him for an offense subject to ex officio prosecution or if disciplinary proceedings have been initiated against him for serious violation of police duty and if keeping this person in service would harm the interest of the service." HLC, *Suspended member of Gendarmery accused of war crimes*, 28 March 2014, http://www.hlc-rdc.org/?p=26473&lang=de. It is reasonably believed that the indictment may contain elements the crime of enforced disappearance.

[49] HLC, *Officers Indicted of Crimes Against Civilians in Trnje Should Be Suspended from Serbian Army*, 20 November 2013, http://www.hlc-rdc.org/?p=25527&lang=de;

[50] ICMP, *Conclusions from the Conference: "The Future of the Missing Persons Process from The Kosovo Conflict"*, 20 December 2012, http://www.ic-mp.org/wp-content/uploads/2012/12/icmp-jcsi-107-1-doc.pdf

organizations including the European Parliament,[51] and in the European Commission's progress reports on Serbia since at least 2010.[52] In 2011, the issue was addressed in a resolution by the Parliamentary Assembly of the Council of Europe,[53] and by the then Commissioner for Human Rights of the Council of Europe.[54] In October 2012, Jelko Kacin, the European Parliament's rapporteur for Serbia, stated that the WPU needed to be transferred to some other institution, such as the Ministry of Justice, on the grounds that witnesses were often intimidated by police.[55]

Although the WPU initially received widespread praise, changes in personnel, the lack of effective protocols and/or their full implementation, along with widely published allegations of threats to and the intimidation of witnesses, against both individual members of the WPU and the head of the unit,[56] have undermined their reputation, and the WPU has become subject to widespread criticism, including from the judiciary.

Amnesty International is aware that the substance of some of the allegations has been publicly contested by the WPU[57] and in some cases, by the OWCP, but they have never been adequately addressed.

In addition to allegations of criminality, which may amount to perverting the course of justice, there are also consistent allegations, which point to negligence[58] on the part of the

[51] European Parliament resolution of 18 April 2013 on the 2012 Progress Report on Serbia, para 11, http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-186; ; see also footnote 60.

[52] See for example, EC, *Progress Report Serbia*, 2014, p.43 http://ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf

[53] PACE Resolution 1784 (2011), *Protection of witnesses as a cornerstone for justice and reconciliation in the Balkans*, paras 16.5.1-16.5.2, http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta11/ERES1784.htm

[54] *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Serbia on 12-15 June 2011*, https://wcd.coe.int/ViewDoc.jsp?id=1834869, see esp. para. 23.

[55] In a resolution on Serbia, the European Parliament called on the authorities "to ensure the credibility and professionalism of the Witness Protection Programme (WPP) and to provide it with adequate resources so that the judiciary can effectively continue its proceedings on war crimes; draws attention to the fact that a number of former police officers voluntarily opted out of the WPP because of its considerable shortcomings", European Parliament resolution of 18 April 2013 on the 2012 Progress Report on Serbia, para, 11, http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-186; see also http://www.balkaninsight.com/en/article/eu-urges-serbia-to-change-witness-protection, 3 October 2012.

[56] According to media reports, in November 2013, 20 police officers in the WPU filed a petition to the authorities against Milos Perović, Head of the WPU for "arrogance, incompetence, improper use of budgetary funds and abuse of authority", *E-Novine*, "Državna banda socijalnih radnika", http://www.e-novine.com/srbija/srbija-tema/96478-Dravna-banda-socijalnih-radnika.html

[57] The Head of the WPU, interviewed by Amnesty International in November 2013, did not deny the allegations, but held that they were limited to two cases in which witnesses had been admitted to the WPP, were subsequently not required to testify and then taken out of the programme. Accusing those witnesses of lying, he stated, "We must stand behind the real witnesses, and provide them with protection."

[58] In November 2013, Judge Snežana Nikolić Garotić, in an unprecedented public criticism, accused the

WPP –and failures in the procedures adopted by the unit, which should also be reviewed. These include a failure to provide a contract between the WPU and the witness, clearly setting out the rights and obligations of the witness and the obligations of the WPU to the witness, including the nature and degree of protection, financial support and accommodation (including its location) to which they are entitled, and to provide reasons for their withdrawal from the programme.

The WPU is located within the Ministry of Interior Police Department (MUP), and staffed by police officers.[59] As with the WCIS, (above), this sets up an immediate tension in cases where the WPU is required to protect former or serving members of the MUP who have agreed to provide testimony against their former colleagues. In some cases, the WPU is alleged to have failed to provide such witnesses with impartial protection, including by intimidating them into withdrawing their testimony.

*Allegations relating to the unprofessional, inappropriate, and sometimes unlawful, treatment of protected witnesses within the WPP have been made most frequently – although not exclusively[60] – in relation to witnesses in proceedings against members of the MUP police operational in Kosovo in 1998-9. As Judge Snežana Nikolić Garotić, told Amnesty International: "For most protected witnesses it is OK, it is OK for civilians. There are problems only when witnesses are police or military personnel; then there are accusations. There is no procedure in law for witnesses to file an appeal against their treatment, and there is nothing that the OWCP can do … They need young policemen without a war background in the WP and the WCIS."[61]*

Because of the allegedly extensive involvement of the Ministry of Interior police in crimes against the civilian population in Kosovo during 1998-9 including murder, and in the burial and/or the removal of bodies of Kosovo Albanians to Serbia, only a handful of cases have yet been effectively investigated.

In understanding the degree of loyalty amongst Ministry of Interior police officers, previously operational in Kosovo, and animosity to their colleagues turned witnesses, the following case offers an illustration. In March 2009, police officers in Leskovac organized protests following the arrest of four former members of the 37th Detachment of Special Police Units (Posebne Jedinice Policije, PJP). Police reservists were seen wearing T-shirts printed with photographs of the arrested PJP members on the front and the slogan, "Heroes of the 37th Battalion", on the back. The protests, apparently supported by the Police Administration of the City of Leskovac and the Presidency of the Independent Police Union of the Republic of Serbia, called for the release of the arrested officers and public disclosure of the names of the witnesses. Police officers were reportedly heard threatening to kill the police witnesses and

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WPU of incompetence in not responding for more than two months to her request to bring a protected witness before the court, thus prolonging the length and costs of the trial. She reportedly stated that she was sending an official complaint about "the work and inadequate behaviour of the WPU to Prime Minister and Minister of Interior Ivica Dačić, "Serbia's War Crimes Witness Protection Unit 'Failing'", 29 November 2013, http://www.balkaninsight.com/en/article/serbia-s-war-crimes-witness-protection-unit-failing

[59] http://www.mup.gov.rs/cms_lat/direkcija.nsf/jedinica-za-zastitu.h, via http://archive.is/CQ24W

[60] Other allegations have been made by non-police witnesses, in relation to Bosnia and Herzegovina and Kosovo.

[61] Amnesty International interview with Snežana Nikolić Garotić, November 2013.

calling for them to be tried for treason.[62] Ivica Dačić, then Minister of Interior, issued a public statement stating his intention to, "provide all the legal aid that is possible, because it is in the [interior ministry's] best interest to prove their innocence."[63]

## ALLEGATIONS OF INTIMIDATION

Serious allegations relating to intimidation or other inappropriate treatment by the WPU have been made public by former protected witnesses. They include those who had previously served in the 37th Detachment of the PJP (see above) in Kosovo, and were prepared to testify against other former or serving police officers, in connection with alleged war crimes in Kosovo in 1999.

Members of the WPU are alleged to have harassed or intimidated these protected witnesses, to the degree that they have feared for their safety, and with the apparent aim of coercing them to withdraw their testimony. Some have alleged that members of their families were also threatened. This has had the effect of deterring others from coming forward as witnesses. [64]

Slobodan Stojanović, a former member of the 37th Detachment of the PJP, based in Leskovac,[65] was approached by the OWCP in 2005, as a potential witness against Radoslav Mitrović. He was admitted into the WPP in March 2009, following death threats by other police officers (see above). He told Amnesty International that, without notice, he and his wife and son were moved to Belgrade, into a "safe house" - which overlooked a police medical building and was 100 metres away from a police dormitory. During his time in Belgrade, he claims that he was repeatedly threatened by members of the WPU, and told not to talk to anyone. After four months, he was told he was no longer in the WPP, and was taken back to his home. His wife told Amnesty International, "We felt physically and mentally ill-treated; we felt they were trying to destroy us. Even the prosecutor didn't want to talk to us". Slobodan Stojanović and his family told Amnesty International that they continue to fear for their lives.

Bojan Zlatković, another former member of the PJP, had also provided testimony against members of the PJP. He alleged that the OWCP had failed to act upon his complaints, and

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[62] Police officers Nenad Stojković, Zoran Marković, Dragan Milenković, and Zoran Nikolić were arrested after the HLC filed a criminal complaint against 17 former members of the Battalion on 2 March 2009 in relation to war crimes in Kosovo, HLC, "Letter to Ivica Dačić, Minister of Internal Affairs", HlcIndexOut: 038-1550-2, 18 March 2009;

[63] Quoted in IWPR, "Poor Protection for Balkan Trial Witnesses", 12 November 2012, http://iwpr.net/report-news/poor-protection-balkan-trial-witnesses;

[64] Amnesty International has independently conducted interviews with serving police officers who told the organization that they were reluctant to testify, based on what they had heard about the possible treatment they might receive from the WPU. The organization has also received written testimony from protected witnesses, and others who have been reluctant to enter the programme on the basis of reports of alleged threats or other inappropriate treatment by the WPU.

[65] For a summary of complaints related to allegations against the WPP, (as sent in a confidential report, *Report on Irregularities in War Crimes Proceedings in the Republic of Serbia*, dated 15 November 2010, and seen by Amnesty International, and later made public); later made public, see *Participation of the Humanitarian Law Center in War Crimes Prosecutions in Serbia*, April 2012, pp. 2-5 and ff, http://www.hlc-rdc.org/wp-content/uploads/2012/04/HLC-Participation-in-war-crimes-prosecution-in-Serbia-April-302012-ff.pdf

withdrew from the WPP in July 2011.[66]

Zoran Rašković a former member of the paramilitary group known as the "Jackals", indicted for killing more than 100 ethnic Albanians in the villages of Zahac, Pavlan, Ljubenić and Ćuška in Kosovo in 1999. Zoran Rašković entered the witness protection programme as a cooperative witness. In December 2011 he requested that his anonymity be removed.[67] In January 2012, Zoran Rašković submitted a letter to the court, in which he detailed threats he had received not only from members of the WPU, but allegedly from a senior official in the Ministry of Interior. He alleged that his mother and father had been threatened by the police, and that the WPU had refused to transfer him to another protected location, or – after he had revealed his identity in court– provide him with identity documents in his own name. Without these, he claimed that he was effectively stateless.[68]

As noted above, some of the mortal remains of Kosovo Albanians killed in Ljubenić were allegedly transferred to Batajnica and reburied there, potentially qualifying the crime as an enforced disappearance.

While some members of the WPU have reportedly been dismissed from the unit, following these allegations, and Miloš Perović, Head of the WPU, was dismissed in June 2014, reportedly for corruption, no comprehensive measures have been taken by the authorities to address these allegations; no criminal investigation has taken place.[69]

In November 2014, a senior police official told Amnesty International that reform of the WPU was to be included in an Action Plan agreed with the European Commission, as part of Serbia's progress towards EU membership, but implementation was not expected to be completed until 2018.[70]

With respect to the Committee's specific question about the human, financial and technical resources available to the WPU, based on interviews conducted by the organization in 2013-14, Amnesty International considers that the unit lacks sufficient funding for the technical resources required, including IT systems and resources like bullet-proof cars. It also lacks

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[66] For detailed allegations in the case of Bojan Zlatković, see "Protected Witness Appeal", in *Trials For War Crimes And Ethnically Motivated Crimes In Serbia In 2010*, pp 69-83, http://www.hlc-rdc.org/wp-content/uploads/2012/03/Reports-on-war-crimes-trials-in-the-Republic-of-Serbia-2010.pdf

[67] For a summary of his testimony, see," On je uvek pucao za Srbiju", http://pescanik.net/2011/12/on-je-uvek-pucao-za-srbiju/; "Beleška sa suđenja za zločine u Ćuški – januar 2012", http://zeneucrnom.org/index.php?option=com_content&task=view&id=768&Itemid=68

[68] "Zaštićeni svedok: "Šakali" prete meni i porodici", (Protected witness: "Jackals" threatening me and my family), 25 January 2012, http://www.blic.rs/Vesti/Hronika/303442/Zasticeni-svedok-Sakali-prete-meni-i-porodici; see also http://www.balkaninsight.com/en/article/zoran-raskovic-the-paramilitary-who-repented

[69] For other reports on these concerns, see, PACE, Committee on Legal Affairs and Human Rights, *The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans: Report*, Doc. 12440, 29 November 2010, see esp. paras. 117-119, http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=12581&Language=en; IWPR, "Poor Protection for Balkan Trial Witnesses", 12 November 2012, http://iwpr.net/report-news/poor-protection-balkan-trial-witnesses;

[70] Amnesty International interview, Ministry of Interior Police, November 2014. In this context, Amnesty International notes that the unit is being provided with some additional capacity through an EU-funded programme.

sufficient skill and capacity to provide the "necessary economic, psychological, social and legal assistance" required by law.[71] Other commentators have suggested they also lack the professionalism, independence, integrity and impartiality to deliver such a service.

## RECOMMENDATIONS

Amnesty International recommends that the Serbian authorities:

- Initiate a full, independent and impartial investigation into allegations of criminal acts, such as intimidation, threats and harassment against the Witness Protection Unit made by former protected witnesses, bringing to justice those reasonably suspected of any criminal offence;

- Review the internal protocols and practices of the WPP with the aim of strengthening the organization including through the provision of adequate resources and the appointment of professional staff to ensure that all protected witnesses and their families receive the highest standard of protection;

- Consider options, including the transfer of the office of the WPU to the Ministry of Justice, which would improve protection for witnesses in cases of crimes under international law.

# REPARATION (ARTICLE 24, QUESTIONS 20-23 OF THE LIST OF ISSUES)

Serbia's failure to include in law a definition of victim, in accordance with Article 24 of the Convention, and to ensure the rights of those victims to adequate reparation, has serious consequences for the relatives of the victims of enforced disappearances. As the Human Rights Committee has underlined on more than one occasion, "The particular needs of the relatives of the missing and disappeared persons must equally be addressed by the State party, including the provision of adequate reparation".[72]

## LACK OF A LAW ON MISSING PERSONS

*"....the lack of the Law on Missing Persons is another problem faced by the families of missing persons, which should govern the special status of such persons and define the rights and benefits of the families of missing persons, in accordance with severity and length of the crime of enforced disappearance".*[73]

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[71] "Zakona o programu zaštite učesnika u krivičnom postupku", (Official Gazette of the RS", no. 85/2005), entered into force 1 January 2006, see esp. paras. 12& 14, http://www.paragraf.rs/propisi/zakon_o_programu_zastite_ucesnika_u_krivicnom_postupku.html

[72] *Concluding Observations of the Human Rights Committee: Serbia and Montenegro*, para 10, 12/08/2004, CCPR/CO/81/SEMO.

[73] *Report to the Committee on Enforced Disappearances*: Serbia, para.145.

In 2012, on the adoption of the annual report of the Government Commission on Missing Persons, the Parliamentary Committee for Human Rights called on the government to introduce a law on missing persons (which would have provided rights in accordance to those set out in the Convention).[74] The head of the government commission was reluctant to support such a law, and in an interview with the Ministry of Justice it was made clear to Amnesty International that the costs of implementing such a law were considered prohibitive.[75] In the absence of such a law, Serbia's obligation to guarantee the rights of victims and their relatives to truth, justice and reparation,[76] remains unfulfilled, and fails to satisfy Serbia's obligation under international law and the provisions of Article 24 of the Convention to guarantee reparation to all victims, including the relatives of the missing.

*"It seems that the notion of a damaged party according to the Criminal Procedure Code and the Law on Contracts and Torts is narrower than the notion of a victim within the meaning of article 24 of the Convention, for which reason the existing legal framework may leave certain persons without protection."*[77]

Serbia has failed to adopt legislative measures providing for adequate reparation and compensation to all those – including the families of the missing – who have suffered harm as a result of enforced disappearance.

While these families may receive payments for funerals, financial donations and ad hoc donations of humanitarian aid from the Commission for Missing Persons, the Head of the Serbian Commission for Missing Persons, Vjelko Odalović, admitted that provisions in the law were inadequate and that not all relatives qualified for such benefits. He told Amnesty International that the relatives of the abducted were worse off than, for example, dependants of former MUP police or others previously employed in the public sector in Kosovo, who receive pensions from the Serbian Ministry for Kosovo and Metohija.[78]

Serbia has no Law on Missing Persons. According to Vjelko Odalović there is a lack of political will to introduce a law, which would also have to apply to the estimated 10,000 relatives of missing persons from wars in Croatia and Bosnia and Herzegovina who are now citizens of Serbia. Instead, the Serbian Commission for Missing Persons, with the assistance of guidelines drawn up by the ICRC, has provided dependants with guidance on their rights to assistance under other laws.[79]

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[74] http://www.danas.rs/danasrs/iz_sata_u_sat/u_regionu_12329_nestalih_lica_.83.html?news_id=57766

[75] Amnesty International interviews: Vjelko Odalović, Head of Government Commission on Missing Persons; Vladimir Pandurić, Ministry of Justice, November 2013.

[76] See Amnesty International, *Burying the Past, Impunity for enforced disappearances and abductions in Kosovo*, 2009, see especially pp. 50-51, http://www.amnesty.org/en/library/info/EUR70/007/2009.

[77] *Report to the Committee on Enforced Disappearances*: Serbia, para.145.

[78] Interview with Vjelko Odalović, Head of Serbian Commission for Missing Persons, February 2009.

[79] For example, internally displaced persons, are entitled to a 70 per cent discount on administrative fees, including fees for documents required in applications for social insurance, Article 19 of Law on Republic Administrative Fees (Official Gazette of the Republic of Serbia, No. 43/2003, 51/2003, 61/2005 and 101/2005). These include birth, marriage, death and citizenship certificates. http://www.praxis.org.rs/index.php?option=com_content&task=view&id=16&Itemid=55

In 2012, the HLC, in discussion with other actors including the Protector of Citizens, (Ombudsperson), the Office for Human and Minority Rights and the Commissioner for the Protection of Equality, initiated a process with the aim of introducing a new Law on Civilian Victims of War, which would apply to all citizens of Serbia who had been the victims of war crimes and other serious violations of human rights during the armed conflicts of the 1990s. Their aim was to provide an administrative law that provided compensation, irrespective of the social, economic or other status of the victim, and that afforded some dignity to survivors and their relatives. A working group to draft the law was formed in October 2013, and HLC began working on a comparative legal analysis. In February 2014, however, the Ombudsperson and other parties withdrew from the process. HLC continue to draft a model law; yet there continues to be little political support for such measures.[80]

In December 2014, the (recently renamed) Ministry of Labour, Employment, Veteran and Social Policy concluded their consultation on a proposed draft of a new law on the rights of war veterans, military and civilian war invalids and their family members.[81] The proposed law excludes, for example, the families of missing persons, victims of sexual violence, people suffering from psychological effects of violations and physical injuries, but whose disability level is less than 50 percent, and victims of Serbian forces. Some 15 NGOs have called for the withdrawal of the draft.[82]

## ACCESS TO REPARATION THROUGH THE COURTS

Because provisions of the Law on Contracts and Torts[83] applicable to compensation suits is only able to provide compensation in relation to violations committed on Serbian territory, the majority of complaints have been brought by ethnic Albanians in relation to violations - including torture and unlawful detention - arising from the armed conflict in Kosovo,[84] and by Bosniaks from the Sandžak region of Serbia who suffered discrimination, persecution, torture and ill treatment at the hands of Serbian police and military forces between 1992-5.[85]

Serbian courts have rarely upheld these claims and even where compensation has been awarded it has most often failed to reflect the gravity of the crime and the harm suffered,[86] due to persistent institutional and legal barriers to the success of claims, as described below.

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[80] For a comprehensive analysis of the current legal framework, see http://www.hlc-rdc.org/wp-content/uploads/2014/03/Administrative_reparations_-in_Serbia_an_analysis_of_the_existing_legal_framework.pdf

[81] Available in Serbian only, at http://www.minrzs.gov.rs/cir/aktuelno/item/1591-poziv-za-javnu-raspravu-nacrt-zakona-o-pravima-boraca,-vojnih-invalida,-civilnih-invalida-rata-i-clanova-njihovih-porodica

[82] HLC, "Draft Law on Rights of Civilian Victims of War should be withdrawn", 26 December 2014, http://www.hlc-rdc.org/?p=27883&lang=de

[83] Zakon o Obligacionim Odnosima, (ZOO), ("SI. list SFRJ", br. 29/78, 39/85, 45/89 – odluka USJ i 57/89, "SI. list SRJ", br. 31/93 i "SI. List SCG", br. 1/2003 - Ustavna povelja), http://paragraf.rs/propisi/zakon_o_obligacionim_odnosima.html

[84] Considered by Serbia, and under UN Security Council Resolution 1244/99 to remain part of Serbia, following Kosovo's unilateral declaration of independence.

[85] See *Serbia and Montenegro: A Wasted Year, The continuing failure to fulfil key human rights commitments made to the Council of Europe,* 22 March 2005, pp. 27-29, http://amnesty.org/en/library/info/EUR70/005/2005/en

[86] See for example, HLC, "Humiliating Compensation for Kosovo Albanians Who Survived Torture by Members of Ministry of Interior", 8 July 2013, http://www.hlc-rdc.org/?p=23505&lang=de

Amnesty International considers that these failings point to the necessity of recognizing the right to reparation in law, and establishing an effective and comprehensive administrative reparation mechanism.

Few victims of enforced disappearances have received reparations in civil proceedings.

## THE SJEVERIN CASE

In 2007, the HLC, [87] acting on behalf of the relatives of people from Sjeverin in Serbia, who were killed or are still missing after their enforced disappearance in October 1992, while they were passengers on a bus traveling through Mioče (in Bosnia and Herzegovina), brought a claim for compensation against Serbia. Their claim for moral damages was dismissed by the first instance court in February 2009. In 2012 HLC appealed the decision. By August 2013, as the Court of Appeal had failed to act on the appeal, HLC lodged a further appeal with the Constitutional Court, on the basis of "unjustified protraction of the proceedings before the Basic Court and the Court of Appeals in Belgrade, in which a final judgment has not yet been rendered even six years after the beginning of the proceedings". On 15 October 2013, the Constitutional Court, found that the rights of the families to a trial within a reasonable time, under Article 32 of the Constitution, had been violated. The Constitutional Court of Serbia granted compensation of €600 to each of the 22 applicants for the violation of this right. HLC subsequently filed a further appeal to the Constitutional Court, on behalf of 20 applicants, and called for a more realistic €10,000 to be awarded to each.[88]

In the seven years since their complaint was lodged, the relatives of those killed or disappeared at Sjeverin have still not been granted adequate reparation (see also below for those denied access to administrative reparation).

According to the HLC proceedings in civil courts for reparations may take an average of five years, although at least one case lasted 13 years. Delays may be attributed to the time taken for proceedings to commence and for subsequent proceedings to take place. Further delays have been caused by the continuing process of judicial reform.[89]

The combination of delays in bringing criminal prosecutions and the reluctance of courts to grant compensation in civil cases pending the conclusion of criminal proceedings amounts to a violation of victims' rights to an "effective remedy".[90]

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[87] The HLC has assisted more than 1,000 victims seeking to exercise their right to compensation for human rights violations, including torture, unlawful arrest and detention, by former Yugoslav and Serbian forces. Amnesty International acknowledges the years of research, advocacy and litigation in this field by the HLC, on behalf of the victims of crimes under international law. This section of the report draws heavily on their work. For a comprehensive analysis, see HLC, *Material Reparations for Human Rights Violations Committed in the Past: Court Practice in the Republic of Serbia*, January 2012, http://www.hlc-rdc.org/wp-content/uploads/2011/12/Material_Reparations.pdf

[88] *Constitutional Court: Right to Fair Trial Violated In Case of Families of Victims from Sjeverin*, HLC, 18 October 2013, http://www.hlc-rdc.org/?p=25106&lang=de, Family *Members of Victims of War Crimes from Sjeverin Seek Justice before constitutional court*, HLC Index out– 133F88388, 6 November 2013, http://www.hlc-rdc.org/?p=25261&lang=de. The appeal is based on violations of: the right to life; the prohibition of discrimination; the right to a fair trial, rehabilitation and compensation of damages, and to equal protection and legal remedy.

[89] HLC, *Material Reparations*, p. 13.

[90] Rodríguez v. Uruguay, Communication No. 322/1988, UN Doc. CCPR/C/51/D/322/1988, 9 August 1994. See similarly the ruling of the European Court of Human Rights in Mikheyev v. The Russian Federation, Application No.77617/01, Judgment of 26 January 2006, para.142.

Given the relatively small number of prosecutions brought by the OWCP or in other jurisdictions, few claimants are able to bring evidence previously confirmed in criminal proceedings. Yet, even in cases where successful criminal prosecutions have been concluded, claims for compensation have been rejected.[91]

In many cases brought by the HLC, victims have been unable to satisfy the requirement to prove actual damage (or pecuniary damage) or proof of harm and suffering. Given the circumstances under which, and length of time since, the alleged violations took place, this is not surprising.[92] Yet even where the alleged victims of torture and ill-treatment still suffer from their physical injuries, or have provided proof of diagnosis with post-traumatic stress disorder (PTSD), the court has rejected their claims on the basis of a lack of medical documentation, or contested whether an injury or a diagnosis of PTSD, for example, is associated with the alleged violation.

In 2004 the Supreme Court (then of Serbia and Montenegro) ruled that claims against the state must be brought within five years of the event that led to injury or of death. This ruling violates the non-applicability of statute of limitations to war crimes and crimes against humanity, including civil suits arising from these crimes.[93] Although these provisions have not been applied in all cases,[94] the Supreme Court ruling can be an almost insurmountable obstacle to victims who wish to claim compensation.

As already noted, in 2011, the Human Rights Committee, expressed concerns, "… at the difficulties faced by individuals trying to obtain compensation from the State for human rights violations, in particular regarding war crimes, *as well as the existing statutory limitation period of five years*".[95] The Committee urged Serbia to "ensure that all victims and their families receive adequate compensation for such violations". Further with specific reference to the Kosovo Albanian victims of enforced disappearances by Serb forces, found buried in mass graves in Serbia, the Committee also urged Serbia to "ensure that the relatives of the victims are provided with adequate compensation."[96]

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[91] See HLC, *Material Reparations*, p.10-11; Amnesty International, *Burying the Past*, p. 58.

[92] In the Sandžak, local human rights groups informed Amnesty International that doctors were forbidden to issue medical certificates to victims of police torture in the period 1992-5, *Serbia and Montenegro: A Wasted Year*, p. 28.

[93] Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted 26 November 1968, entered into force on 11 November 1970. Serbia became a state party by succession in 2001, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-6&chapter=4&lang=en; *Material Reparations*, pp. 8-10, and footnote 12, Su No: I-400/1/3-11. In July 2011, the Constitutional Court of Serbia, in a slightly more positive decision, also decided that, in cases where the perpetrator had been convicted, that "the request for damages against any responsible person, not just the offender, is barred once the time allowed for the prosecution is up."

[94] See *Servicing Justice or Trivializing Crimes? Fulfilling the Right for Victims of Human Rights Abuses to seek Reparation before the Serbian Courts*, HLC, 2012, pp. 30-35, http://www.hlc-rdc.org/wp-content/uploads/2013/06/Fulfilling-the-Right-for-Victims-of-Human-Rights-Abuses-to-seek-Reparation-before-the-Serbian-Courts.pdf

[95] *Concluding observations of the Human Rights Committee: Serbia*, 20 May 2011, para.12

[96] *Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee: Serbia*, CCPR/C/SRB/CO/2, 20 May 2011, para.10. This has also been

In 2011, the CoE Commissioner for Human Rights, following a visit to Serbia, noted that he was "worried by the lack of a reparation mechanism for all victims of war-related crimes in Serbia", and noted obstacles to reparation, including the five-year limitation imposed by the Constitutional Court. The Commissioner urged the authorities to "take all necessary measures to ensure reparation to victims of war-related crimes and to their families, in line with the established principles of international law as reiterated in the 2005 UN 'Basic Principles and Guidelines'".[97]

Barriers in civil law proceedings which prevent victims from receiving reparation through the courts, underscore the need to establish an effective administrative system for determining claims to compensation and other forms of reparation.

## ACCESS TO ADMINISTRATIVE REPARATION

The absence of a comprehensive legal framework in Serbia with respect to the right to reparation for civilian victims of crimes under international law, including the victims of enforced disappearances has been highlighted for many years - by Amnesty International, domestic and international NGOs and inter-governmental organizations.[98]

Of the five forms of reparation set out in international standards - restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition – the current legal framework provides only a limited number of civilian victims of war with access to a form of financial compensation in the form of a pension or other social benefits. The Law on the Rights of Civilian War Invalids applies only to individuals, and the families of individuals who were killed in armed conflict, or died as a result of being wounded or injured by non-Serb forces.[99] It is not available to victims of violations by Serb forces.

Both the Serbian laws on military and civilian "invalids" provide for monetary compensation, in the form of a monthly payment, to persons disabled by war and the families of persons killed in armed conflict or deceased as a result of injuries suffered in connection with the conflict. Yet, in many respects, the law discriminates against civilian victims of war, including the relatives of missing persons.[100] For example, the definition of a "civilian victim of war", includes only those who were murdered or died as a result of the armed conflict; it does not include disappeared or missing persons. Further, while families of missing servicemen have the right to family disability pensions irrespective of their income, the

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underlined by the Committee against Torture, "The Committee regrets the Supreme Court ruling of 2005 where it applied a statute of limitation in respect of the crime of torture", *Concluding observations of the Committee against Torture: Serbia*, CAT/C/SRB/CO/1, 19 January 2009, para.5, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/SRB/CO/1%20&Lang=En

[97] *Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Serbia on 12-15 June 2011*, CommDH(2011)29, 22 September 2011, paras. 24-27; para.60, https://wcd.coe.int/ViewDoc.jsp?id=1834869

[98] *Burying the Past*, see especially pp. 50-51.

[99] The Law on Rights of Civilian War Invalids, "Službeni glasnik RS" ("Official Gazette of RS") No. 52/96. The law provides for various forms of reparation including financial and heath care benefits, a monthly cash payments and funeral expenses; for HLC translation, see http://www.hlc-rdc.org/wp-content/uploads/2014/03/Law_on_Disability_Rights_of_the_Civilian_Victims_of_War.pdf.

[100] HLC, *Material Reparations for Human Rights Violations Committed in the Past: Court Practice in the Republic of Serbia*, http://www.hlc-rdc.org/wp-content/uploads/2013/01/Material_Reparations.pdf

families of missing civilians are only able to invoke this right if they declare their missing relative dead, and their income is below the level established by law.[101]

As already noted, the benefits set out in the current Law on the Rights of Civilian War Invalids are not automatically provided to the relatives of disappeared persons. The rights of family members were further restricted from 2012 onwards, after the Priboj Municipal Administration dismissed the claims of the families of Sead Pecikoza, Mevlida Kodlžić and Ramahudin Ćatović, disappeared on 22 February 1992. While accepting that the missing persons were all citizens of Serbia, and that it was beyond dispute that they were killed, the administration stated that the Law on the Civilian Victims of War is a 'republic law', which could be applied only to cases "occurring on the territory of the Republic of Serbia, w.ich did not happen in this case". The victims were, as noted above, abducted from a Serbian train, as it passed briefly through Bosnia and Herzegovina.

Further, the claim of the Ćatović family to be recognized as the family of a civilian victim of war was rejected, with respect to their second son Sabahudin Ćatović, who was abducted from outside his home in Sjeverin on 21 February1992. This case was dismissed on the basis that: 'a civilian victim of war is a person who was killed or otherwise died, a fact which can be determined "only on the basis of the written evidence from the time the person died"'. The fact that Sabahudin Ćatović is listed by the International Committee of the Red Cross as still missing was not accepted as written evidence.[102]

The HLC, acting for the families, filed a complaint with the Ministry of Labour, Employment, and Social Policy on 17 October 2012 against the decision on the basis that it violated the constitution, domestic law and international standards and was discriminatory.[103] However, their complaint was not upheld, and in 2013, the Ministry of Labour, Employment and Social Policy revoked the status of the Sjeverin families on the basis that the enforced disappearance took place outside of the Republic of Serbia. This has subsequently been applied to all other similar cases.[104]

This decision had effectively limited compensation to victims and family members of victims of the armed conflict in Kosovo. As far as Amnesty International is aware, few relatives of Kosovo Albanians disappeared and killed by Serbian police, paramilitary or military forces, have attempted to claim reparation. However a number of claims for compensation have been brought by some of more than 2,000 Kosovo Albanians who had been arrested by June 1999 or held in places of detention in Kosovo, where they alleged that they had been subject to torture and other ill treatment. After 9 June, all prisoners were transferred to prisons in Serbia proper, where they were frequently beaten. In many cases the Serbian authorities had refused to confirm their whereabouts. The majority were never indicted, but detained for between four months and two years. While some claimants have been awarded reparation, others have been denied compensation, or the amount of compensation awarded has failed to

[101] HLC & Documenta, *Transitional Justice in Post-Yugoslav Countries*, *Report 2007,* p. 51, http://www.forumnvo.org.rs/docs/Transitional_Justice.pdf

[102] Sabahudin Ćatović, http://familylinks.icrc.org/bosnia/en/Pages/person-details.aspx?cid=62505

[103] Based on a request under the Law on the Access to Information of Public Importance, the HLC was able to identify a number of recognized claims made by Bosnian Serb and Croatian Serb civilian victims of war, who sustained their injuries during the armed Croatia.

[104] See *Letter to the Prime Minister Ivica Dačić*, http://www.hlc-rdc.org/?p=23628&lang=de

reflect the gravity of the violation.[105]

## THE LEGAL STATUS OF THE DISAPPEARED AND THEIR RELATIVES

Serbia has failed to introduce legislation to address the legal situation of disappeared persons and their relatives, where the missing person is a civilian,[106] and when the fate and whereabouts of the missing person has not been resolved.

While both the families of missing servicemen and civilians are required to undertake civil proceedings to declare the missing person dead, the majority of family members of missing civilians are often unaware that they may receive monthly compensation under these conditions, or do not wish to launch such proceedings, in the hope that their relative is still alive.[107]

## ENSURING THE RIGHT TO THE TRUTH

The Convention at Article 24(2) provides that each victim - the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance, (in practice, the relatives of the missing person, where the disappeared person does not survive) have the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. In addition, the Convention also provides that each state party shall take appropriate measures in this regard.

This is a continuing obligation, irrespective of when Serbia became a state party to the Convention; under international law, the acts constituting enforced disappearances are considered as a continuing offence as long as the fate and whereabouts of the disappeared person remain unclarified.[108]

This obligation is partially discharged through the Serbian Government Commission on Missing Persons which is charged, as described in Section D of the State Party report, in cooperation with the relevant authorities, with resolving the status of missing persons, informing families about the current status of cases, and where possible, the circumstances of the death of their family member. However, in the absence of a Law on Missing Persons, relatives have no statutory right to know the fate and whereabouts of their family member.

## RECOMMENDATIONS

Amnesty International recommends that the Serbian authorities:

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[105] HLC, *Serving justice or trivializing crimes? Fulfilling the Right for Victims of Human Rights Abuses to seek Reparation before the Serbian Courts*, 2012, see pp. 49-76, http://www.hlc-rdc.org/wp-content/uploads/2013/06/Fulfilling-the-Right-for-Victims-of-Human-Rights-Abuses-to-seek-Reparation-before-the-Serbian-Courts.pdf

[106] Article 13 (1) of the Law on the Basic Rights of Servicemen, Military Invalids and Families of Deceased Servicemen, Official Gazette of the SRJ, numbers 24/98, 29/98 and 25/200, applies to families of servicemen who "died or disappeared". The term "disappeared" is not included in Article 3 (2) of the Law on the Rights of Civilian War Invalids, *Official Gazette of the RS*, No 52/96.

[107] *Transitional Justice in Post-Yugoslav Countries,* p.51.

[108] *Cyprus v Turkey*, Judgment of the European Court of Human Rights (10 May 2001) at paras. 136, and 150; Article 8(1)(b) of the International Convention on the Protection of All Persons from Enforced Disappearance; Article 17(1) of the Declaration on the Protection of All Persons from Enforced Disappearance.

- Enact and enforce current legislation on missing persons whereby all victims of crimes under international law by Serb forces obtain full reparation and prompt, fair and adequate compensation through an administrative and simple system, without discrimination.

- Revise the current draft law on the rights of war veterans, military and civilian war invalids, ensuring that victims - including all victims of enforced disappearances - are provided with effective and adequate reparation in relation to the harm suffered, without discrimination.

- Ensure the introduction of legal amendments in accordance with Article 24 of the Convention, with particular respect to the definition of "victim", ensuring the right to the truth and the right to fair and adequate compensation and other forms of reparation including, restitution; rehabilitation; satisfaction, and guarantees of non-repetition.

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